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RECENT DECISIONS

AGENCY—UNDISCLOSED PRINCIPAL OF SENDEE—FAILURE TO DELIVER TELEGRAM.—B. sent a telegram by the appellant company to A. The agent of the company was negligent in failing to deliver the message. C., who was the undisclosed principal of A. the sendee, sold his cotton before the delivery of the telegram. This action was brought for C's loss through the failure to deliver. *Held*, the defendant is not liable. *Western Union Tel. Co. v. Lowden* (Miss.), 77 South. 145.

The sender of a telegram enters into a contractual relation with the telegraph company when the latter agrees to transmit the message over its wires, and hence he may maintain an action for its breach caused by the default of the other party to the contract. *Western Union Tel. Co. v. Flannigan*, 113 Ark. 9, 167 S. W. 701. So also the addressee of a telegram has a right of action in case of failure of performance on the part of the telegraph company. *Western Union Tel. Co. v. Holder*, 117 Ark. 210, 174 S. W. 552; *Penobscot Fish Co. v. Western Union Tel. Co.*, 91 Conn. 35, 98 Atl. 431. A telegraph company is also liable in damages for breach of its duty owed to a person who appears on the face of the telegram to be its beneficiary, although he is neither the sender nor the addressee. *Western Union Tel. Co. v. McKibben*, 114 Ind. 511, 14 N. E. 894. But a telegraph company cannot be held liable to a stranger to the company and to the telegram for any loss he sustains by the negligence of the company in its receipt or transmission of the message, because the company cannot anticipate or foresee his injury and owes him no duty. *McCormick v. Western Union Tel. Co.*, 79 Fed. 449, 38 L. R. A. 648; *Western Union Tel. Co. v. Weniski*, 84 Ark. 457, 106 S. W. 486. And when it is not apparent on the face of the telegram that the party named had a beneficial interest in the telegram, the fact that the receiving agent of the company knew of the relationship between the parties does not affect the case. *Western Union Tel. Co. v. Kirkpatrick*, 76 Tex. 217, 18 Am. St. Rep. 37; *Morrow v. Western Union Tel. Co.*, 107 Ky. 517, 54 S. W. 853.

An apparent exception to this exclusive rule is found in the right given an undisclosed principal of the sender to bring an action against the telegraph company for any damages caused by the latter's negligence in failing to deliver, or in delaying the delivery of, a message. *Purdon Naval Stores Co. v. Western Union Tel. Co.*, 153 Fed. 327; *Harkness v. Western Union Tel. Co.*, 73 Ia. 190, 34 N. W. 811, 5 Am. St. Rep. 672. This rule seems to be only an application of the well known principle of agency that an undisclosed principal is entitled to all the rights of his agent since he accepts not only the benefits but also the burdens of the agent's acts. MECHAM, AGENCY, 2 ed., 1625. But the same principle is held not applicable to the undisclosed principal of the addressee, because the company cannot anticipate that the message it is transmitting will be communicated to another. And hence, the principal case comes under the general principle of law that a person transmitting a message

erroneously owes no duty of care to transmit it correctly to those to whom he does not communicate it, nor to those to whom he does not anticipate that it will be communicated. *Stuard v. Western Union Tel. Co.*, 106 Miss. 883, 64 South. 835; *Western Union Tel. Co. v. Schrivner*, 141 Fed. 538, 4 L. R. A. (N. S.) 678.

BILLS OF LADING—LIEN—SURRENDER OF PLEDGE.—The defendant sold certain goods to a firm and drew time drafts on it for the purchase price. The drafts, with bills of lading for the goods attached, were discounted by plaintiff bank and the bills of lading endorsed to it. The drafts were accepted and the bills of lading surrendered by the agent of the bank to the drawee (buyer). After acceptance, but before maturity of the drafts, both the buyer and seller became insolvent and the goods were returned to the seller. Thereupon the plaintiff bank sued the seller to obtain possession of the goods, claiming an equitable lien thereon. *Held*, the bank cannot recover. *Helburn Thompson Co. v. All Americas, etc., Corp.*, 167 N. Y. Supp. 711.

A bill of lading is a written acknowledgment, (1) of the receipt of goods, and (2) of an agreement to transport and deliver them at a place specified, to a person named, or his order. *Whitnack v. Chicago, etc., R. Co.*, 82 Neb. 464, 118 N. W. 67, 130 Am. St. Rep. 692, 19 L. R. A. (N. S.) 1011; *Davis v. R. Co.*, 66 Vt. 290, 29 Atl. 313. It has a twofold character. In so far as it acknowledges the acceptance of goods to be shipped it is a mere receipt. *Thomas v. R. Co.*, 85 S. C. 537, 64 S. E. 220, 34 L. R. A. (N. S.) 1177. But where it sets forth the terms on which the transportation is to be made it is a contract. *Merchants, etc. Transportation Co. v. Eichberg*, 109 Md. 211, 71 Atl. 993, 130 Am. St. Rep. 524. It is a symbol of the property therein described and when properly transferred will operate to pass title to the goods while in transit. *American National Bank v. Henderson*, 123 Ala. 612, 23 South. 498, 82 Am. St. Rep. 147. So also it may be pledged as collateral security for a debt and a transfer of it invests the pledgee with actual possession of the goods. *Peters v. Elliot*, 78 Ill. 321.

A bill of lading may be drawn to the consignor's order, the consignee's order, or to a specified person. When drawn to the consignor's order it may be for either of two purposes: (1) to retain the power of final disposition of the goods, or (2) merely to secure the contract price. His intention is evidenced by his subsequent dealings with the bill of lading. If he attaches it to a draft for the purchase price, drawn on the buyer, which draft he discounts at a bank, then he has manifested an intention to retain title merely for the purpose of securing the purchase price. *Mirabita v. Bank*, 3 Exch. Div. 164. Where the consignor evinces an intention to retain final disposition of the goods, then no legal title vests in the buyer when he tenders the purchase price, even though the seller thereby commits a breach of contract. *Waite v. Baker*, 2 Exch. Div. 1.

Where the seller draws a draft on the buyer which he has discounted by a bank, the buyer acquires an equitable title to the goods. *Mirabita v. Bank, supra*; *Forty Sacks of Wool*, 14 Fed. 643. Here the bank succeeds to the rights of the seller, acquiring an interest in the goods as se-